

AMENDED IN SENATE APRIL 6, 2006

SENATE BILL

No. 1295

Introduced by Senator Soto

February 15, 2006

~~An act to amend Section 190 of the Penal Code, relating to murder.~~
An act to amend Section 1050 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 1295, as amended, Soto. ~~Murder: punishment. Criminal procedure.~~

Existing law provides a procedure for continuing criminal proceedings.

This bill would require, in matters that are traffic violations punishable as infractions, the district attorney to move to continue a hearing upon request by the citing peace officer for good cause when the citing peace officer cannot appear at the hearing.

~~Existing law, as amended by initiative statute, provides that every person guilty of murder in the first degree shall be punished by death, imprisonment in the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life.~~

~~This bill would make a technical, nonsubstantive change to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1050 of the Penal Code is amended to
2 read:

3 1050. (a) The welfare of the people of the State of California
4 requires that all proceedings in criminal cases shall be set for trial
5 and heard and determined at the earliest possible time. To this
6 end, the Legislature finds that the criminal courts are becoming
7 increasingly congested with resulting adverse consequences to
8 the welfare of the people and the defendant. Excessive
9 continuances contribute substantially to this congestion and cause
10 substantial hardship to victims and other witnesses. Continuances
11 also lead to longer periods of presentence confinement for those
12 defendants in custody and the concomitant overcrowding and
13 increased expenses of local jails. It is therefore recognized that
14 the people, the defendant, and the victims and other witnesses
15 have the right to an expeditious disposition, and to that end it
16 shall be the duty of all courts and judicial officers and of all
17 counsel, both for the prosecution and the defense, to expedite
18 these proceedings to the greatest degree that is consistent with
19 the ends of justice. In accordance with this policy, criminal cases
20 shall be given precedence over, and set for trial and heard
21 without regard to the pendency of, any civil matters or
22 proceedings. In further accordance with this policy, death penalty
23 cases in which both the prosecution and the defense have
24 informed the court that they are prepared to proceed to trial shall
25 be given precedence over, and set for trial and heard without
26 regard to the pendency of, other criminal cases and any civil
27 matters or proceedings, unless the court finds in the interest of
28 justice that it is not appropriate.

29 (b) To continue any hearing in a criminal proceeding,
30 including the trial, (1) a written notice shall be filed and served
31 on all parties to the proceeding at least two court days before the
32 hearing sought to be continued, together with affidavits or
33 declarations detailing specific facts showing that a continuance is
34 necessary and (2) within two court days of learning that he or she
35 has a conflict in the scheduling of any court hearing, including a
36 trial, an attorney shall notify the calendar clerk of each court
37 involved, in writing, indicating which hearing was set first;
38 *provided however, that in the matter of a traffic violation that is*

1 *an infraction, upon request by the citing peace officer and upon*
2 *a showing of good cause, the district attorney shall move to*
3 *continue a hearing pursuant to the procedures herein, when the*
4 *peace officer is unable to appear for that hearing. A party shall*
5 *not be deemed to have been served within the meaning of this*
6 *section until that party actually has received a copy of the*
7 *documents to be served, unless the party, after receiving actual*
8 *notice of the request for continuance, waives the right to have the*
9 *documents served in a timely manner. Regardless of the*
10 *proponent of the motion, the prosecuting attorney shall notify the*
11 *people's witnesses and the defense attorney shall notify the*
12 *defense's witnesses of the notice of motion, the date of the*
13 *hearing, and the witnesses' right to be heard by the court.*

14 (c) Notwithstanding subdivision (b), a party may make a
15 motion for a continuance without complying with the
16 requirements of that subdivision. However, unless the moving
17 party shows good cause for the failure to comply with those
18 requirements, the court may impose sanctions as provided in
19 Section 1050.5.

20 (d) When a party makes a motion for a continuance without
21 complying with the requirements of subdivision (b), the court
22 shall hold a hearing on whether there is good cause for the failure
23 to comply with those requirements. At the conclusion of the
24 hearing, the court shall make a finding whether good cause has
25 been shown and, if it finds that there is good cause, shall state on
26 the record the facts proved that justify its finding. A statement of
27 the finding and a statement of facts proved shall be entered in the
28 minutes. If the moving party is unable to show good cause for the
29 failure to give notice, the motion for continuance shall not be
30 granted.

31 (e) Continuances shall be granted only upon a showing of
32 good cause. Neither the convenience of the parties nor a
33 stipulation of the parties is in and of itself good cause.

34 (f) At the conclusion of the motion for continuance, the court
35 shall make a finding whether good cause has been shown and, if
36 it finds that there is good cause, shall state on the record the facts
37 proved that justify its finding. A statement of facts proved shall
38 be entered in the minutes.

39 (g) (1) When deciding whether or not good cause for a
40 continuance has been shown, the court shall consider the general

1 convenience and prior commitments of all witnesses, including
2 peace officers. Both the general convenience and prior
3 commitments of each witness also shall be considered in
4 selecting a continuance date if the motion is granted. The facts as
5 to inconvenience or prior commitments may be offered by the
6 witness or by a party to the case.

7 (2) For purposes of this section, “good cause” includes, but is
8 not limited to, those cases involving murder, as defined in
9 subdivision (a) of Section 187, allegations that stalking, as
10 defined in Section 646.9, a violation of one or more of the
11 sections specified in subdivision (a) of Section 11165.1 or
12 Section 11165.6, or domestic violence as defined in Section
13 13700, or a case being handled in the Career Criminal
14 Prosecution Program pursuant to Sections 999b through 999h, or
15 a hate crime, as defined in Title 11.6 (commencing with Section
16 422.6) of Part 1, has occurred and the prosecuting attorney
17 assigned to the case has another trial, preliminary hearing, or
18 motion to suppress in progress in that court or another court, *or a*
19 *peace officer, acting as a witness, has mandatory training.* A
20 continuance under this paragraph shall be limited to a maximum
21 of 10 additional court days.

22 (3) Only one continuance per case may be granted to the
23 people under this subdivision for cases involving stalking, hate
24 crimes, or cases handled under the Career Criminal Prosecution
25 Program. Any continuance granted to the people in a case
26 involving stalking or handled under the Career Criminal
27 Prosecution Program shall be for the shortest time possible, not
28 to exceed 10 court days.

29 (h) Upon a showing that the attorney of record at the time of
30 the defendant’s first appearance in the superior court on an
31 indictment or information is a Member of the Legislature of this
32 state and that the Legislature is in session or that a legislative
33 interim committee of which the attorney is a duly appointed
34 member is meeting or is to meet within the next seven days, the
35 defendant shall be entitled to a reasonable continuance not to
36 exceed 30 days.

37 (i) A continuance shall be granted only for that period of time
38 shown to be necessary by the evidence considered at the hearing
39 on the motion. Whenever any continuance is granted, the court

1 shall state on the record the facts proved that justify the length of
2 the continuance, and those facts shall be entered in the minutes.

3 (j) Whenever it shall appear that any court may be required,
4 because of the condition of its calendar, to dismiss an action
5 pursuant to Section 1382, the court must immediately notify the
6 Chair of the Judicial Council.

7 (k) This section shall not apply when the preliminary
8 examination is set on a date less than 10 court days from the date
9 of the defendant's arraignment on the complaint, and the
10 prosecution or the defendant moves to continue the preliminary
11 examination to a date not more than 10 court days from the date
12 of the defendant's arraignment on the complaint.

13 (l) This section is directory only and does not mandate
14 dismissal of an action by its terms.

15 ~~SECTION 1. Section 190 of the Penal Code is amended to~~
16 ~~read:~~

17 ~~190. (a) Every person who is guilty of murder in the first~~
18 ~~degree shall be punished by death, imprisonment in the state~~
19 ~~prison for life without the possibility of parole, or imprisonment~~
20 ~~in the state prison for a term of 25 years to life. The penalty to be~~
21 ~~applied shall be determined as provided in Sections 190.1, 190.2,~~
22 ~~190.3, 190.4, and 190.5.~~

23 ~~Except as provided in subdivision (b), (c), or (d), every person~~
24 ~~guilty of murder in the second degree shall be punished by~~
25 ~~imprisonment in the state prison for a term of 15 years to life.~~

26 ~~(b) Except as provided in subdivision (c), every person guilty~~
27 ~~of murder in the second degree shall be punished by~~
28 ~~imprisonment in the state prison for a term of 25 years to life if~~
29 ~~the victim was a peace officer, as defined in subdivision (a) of~~
30 ~~Section 830.1, subdivision (a), (b), or (c) of Section 830.2,~~
31 ~~subdivision (a) of Section 830.33, or Section 830.5, who was~~
32 ~~killed while engaged in the performance of his or her duties, and~~
33 ~~the defendant knew, or reasonably should have known, that the~~
34 ~~victim was a peace officer engaged in the performance of his or~~
35 ~~her duties.~~

36 ~~(c) Every person guilty of murder in the second degree shall~~
37 ~~be punished by imprisonment in the state prison for a term of life~~
38 ~~without the possibility of parole if the victim was a peace officer,~~
39 ~~as defined in subdivision (a) of Section 830.1, subdivision (a),~~
40 ~~(b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or~~

1 ~~Section 830.5, who was killed while engaged in the performance~~
2 ~~of his or her duties, and the defendant knew, or reasonably~~
3 ~~should have known, that the victim was a peace officer engaged~~
4 ~~in the performance of his or her duties, and any of the following~~
5 ~~facts has been charged and found true:~~

6 ~~(1) The defendant specifically intended to kill the peace~~
7 ~~officer.~~

8 ~~(2) The defendant specifically intended to inflict great bodily~~
9 ~~injury, as defined in Section 12022.7, on a peace officer.~~

10 ~~(3) The defendant personally used a dangerous or deadly~~
11 ~~weapon in the commission of the offense, in violation of~~
12 ~~subdivision (b) of Section 12022.~~

13 ~~(4) The defendant personally used a firearm in the commission~~
14 ~~of the offense, in violation of Section 12022.5.~~

15 ~~(d) Every person guilty of murder in the second degree shall~~
16 ~~be punished by imprisonment in the state prison for a term of 20~~
17 ~~years to life if the killing was perpetrated by means of shooting a~~
18 ~~firearm from a motor vehicle, intentionally at another person~~
19 ~~outside of the vehicle with the intent to inflict great bodily injury.~~

20 ~~(e) Article 2.5 (commencing with Section 2930) of Chapter 7~~
21 ~~of Title 1 of Part 3 shall not apply to reduce any minimum term~~
22 ~~of a sentence imposed pursuant to this section. A person~~
23 ~~sentenced pursuant to this section shall not be released on parole~~
24 ~~prior to serving the minimum term of confinement prescribed by~~
25 ~~this section.~~